STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE MICHIGAN COURT OF APPEALS
Fitzgerald, P.J. and Bandstra and Schuette, J.J.

ESTATE OF DANIEL CAMERON, by
DIANE CAMERON & JAMES CAMERON,
Co-Guardians,

Plaintiff/Appellant.

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Appellee.

Supreme Court Case No: 127018

Court of Appeals Case No: 248315

Washtenaw County Circuit Court
Case No: 02-549-NF

SUPPLEMENTAL BRIEF OF MICHIGAN DEPARTMENT OF COMMUNITY HEALTH, AS *AMICUS CURIAE*, SUPPORTING PLAINTIFF/APPELLANT

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Dated: March 13, 2006

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STATEMENT OF QUESTION PRESENTED

WHETHER THE COURT SHOULD REVERSE THE DECISION OF THE COURT OF APPEALS BECAUSE IT WAS DECIDED IN ERROR AND CONSEQUENTLY WILL IMPAIR THE MICHIGAN DEPARTMENT OF COMMUNITY HEALTH'S SUBROGATED RIGHT TO RECOVER MEDICAID DOLLARS.

Appellant would answer: Yes

Appellee would answer: No

Amicus Curiae Michigan Department of Community Health answers: Yes

THE INTEREST OF THE AMICUS CURIAE, THE MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

Michigan Department of Community Health ("MDCH") is the state agency responsible for administering the joint federal-state program for medical assistance, also known as Medicaid. 42 USC 1396 *et seq.*; MCL 400.105 *et seq.* Medicaid reimburses participating medical providers for the medically necessary services they provide to individuals unable to pay for such services.

If a person is unable to pay for the medical services which were incurred as a result of injuries arising from an automobile accident and that party is initially deemed eligible for Medicaid, such services are paid for by the Medicaid program.

When MDCH has expended Medicaid on behalf of a recipient, it must ascertain whether a third party may be liable and, if so, seek recovery from those third parties responsible for the injuries and medical condition as subrogee of the recipient. 442 USC 1396a(a)(25) and MCL 400.106.

MDCH is subrogated to any right of recovery which the injured person may have from the cost of hospitalization, physician, outpatient, ambulance, pharmaceutical and other medical services which the MDCH has provided or will provide through the Medicaid program, pursuant to MCL 400.106.

As noted in the Affidavit of Jane Alexander, Manager of the Court-Originated Liability Section of the Michigan Department of Community Health (see attached), presently the MDCH has 281 active cases with date of injury more than one year old with outstanding claims of $4,081,935.27. Additionally, a statistical analysis of available data indicates that there will be an additional 4,376 cases on an annual basis with a financial impact of $3,011,565.22 per year. Consequently, the overall impact to the State Medicaid program will involve 13,409 accidents with a potential recovery of over $13 million dollars.

Therefore, MDCH has a significant interest in this matter and requests a reversal of the Court of Appeals decision below.

ARGUMENT

I. MICHIGAN LAW AND PUBLIC POLICY RECOGNIZE A TOLLING OF THE STATUTE OF LIMITATIONS WHEN THE PERSON WHO HOLDS THE CAUSE OF ACTION IS A MINOR OR INCOMPETENT UNTIL ONE YEAR AFTER THE DISABILITY IS REMOVED. MICHIGAN'S NO FAULT STATUTE PROVIDES FOR A ONE YEAR STATUTE OF LIMITATIONS FROM THE DATE OF THE ACCIDENT. THE NO FAULT STATUTE IS NOT UNIQUE FROM THE OTHER STATUTE OF LIMITATIONS. ACCORDINGLY, THIS COURT SHOULD APPLY THE TOLLING FOR MINORS AND INCOMPETENTS IN NO FAULT CASES.

On July 13, 2004, the Court of Appeals issued a published opinion in *Estate of Daniel Cameron, et al* v *Auto Club Association*,[1] which held that for causes of action arising after October 13, 1993, MCL 600.5851(1) of the Revised Judicature Act (hereafter "RJA") does not toll the limitation of actions provision of MCL 500.3145(1) of the No Fault Act. Following briefing and oral argument in a February 2, 2006 Order, this Court requested supplemental briefing on this question.

Amicus Curiae Michigan Department of Community Health hereafter ("MDCH") concurs with the argument of the Appellant as to how and why the decision of the Court of Appeals below was decided in error.

In short, the Court of Appeals erroneously held that by amending the statutory language of the RJA in 1993, to change the pertinent language from "any action" to "an action under this act," barred the tolling provision for minors and incompetent individuals in No Fault cases. Such an application is inconsistent with the previous decisions of the Court of Appeals in *Professional*

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[1] *Estate of Daniel Cameron, et al* v *Auto Club Association*, 263 Mich App 95; 687 NW2d 354 (2004)

Rehabilitation Associates v State Farm Mutual Auto Ins Co[2] and *Rawlins v Aetna Casualty & Surety Co.*[3]

Applying the reasoning of the Court of Appeals in this case, a minor or incompetent person involved in an auto negligence case could utilize the tolling provisions of the RJA, but would be unable to toll the statute in a first-party no fault case because of the separate limitation of actions provided for first-party claims. Such a result seems absurd and certainly cannot be what the Legislature intended when it amended the RJA since it would result in the loss of millions of dollars to the Medicaid fund.

The MDCH files this *amicus* to inform this Honorable Court of the impact the decision will cause to the public treasury of this State, if allowed to stand. It may result in a large number of unpaid claims to ultimately become the responsibly of the already overburdened social welfare agencies and Michigan taxpayers through the Medicaid programs.

The MDCH is the state agency responsible for administering the joint federal-state program for medical assistance, also known as Medicaid. 42 USC 1396 *et seq.*; MCL 400.15 *et seq*. Medicaid reimburses participating medical providers for the medically necessary services they provide to individuals unable to pay for such services.

If a person is unable to pay for the medical services which were incurred as a result of injuries arising from an automobile accident and that person is initially deemed eligible for Medicaid, such services are paid for by the Medicaid program.

When MDCH has expended Medicaid funds on behalf of an individual, it must ascertain whether a third party may be liable and, if so, seek recovery from those third parties responsible

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[2] *Professional Rehabilitation Associates v State Farm Mutual Auto Ins Co*, 228 Mich App 167; 577 NW2d 909 (1998)

[3] *Rawlins v Aetna Casualty & Surety Co*, 92 Mich App 268, 271; 284 NW2d 782 (1979)

for the injuries and medical condition as subrogee of the recipient. 42 USC 1396(a)(25) and MCL 400.106.

MDCH is subrogated to any right of recovery which the injured person may have for the cost of hospitalization, physician, outpatient, ambulance, pharmaceutical and other medical services which the MDCH has provided or will provide through the Medicaid program, pursuant to MCL 400.106.

It is established law in this State that when a person is injured in an automobile accident and is entitled to no-fault benefits, that person is not medically indigent as defined in Social Welfare Act, MCL 400.106. The person is, therefore, ineligible for Medicaid, even if the injured person would have qualified under the Medicaid statute if the injury had not resulted from a motor vehicle accident.[4] Unfortunately, it is not uncommon for an otherwise indigent person to have his/her medical expenses paid by Medicaid even though no-fault coverage is applicable, particularly where the injured person is a minor or an incompetent person. This mistake occurs often because at the initial stages of medical treatment (e.g., emergency) the only known coverage is Medicaid. The Medicaid providers (hospitals, doctor, etc.) bill the Medicaid program to recover their costs. And, because of infancy or incompetence, it is typically the case that the MDCH does not receive immediate notice that No-Fault coverage is available.

Once the MDCH is notified or discovers the no-fault coverage, the State aggressively pursues *subrogation* for the amount it has paid in error when no-fault coverage is determined to be applicable under MCL 400.106(1)(b)(ii). The MDCH is the division of State Government that carries out the task of recovering State monies improperly paid on behalf of no-fault insured's. Importantly, under MCL 400.106(1)(b)(ii) the MDCH is *subrogated* to the insured's

[4] *Johnson v Michigan Mut Ins Co,* 180 Mich App 314, 320-321; 446 NW2d 899 (1989)

right to collect no-fault benefits. The MDCH may initiate the proceedings in its own name or in the name of the injured, deceased, or disabled person, the person's guardian, personal representative, estate, dependents or survivors. The Court of Appeals holding below, if left to stand, will hinder the MDCH's ability under MCL 400.106(1)(b)(ii) to recover State taxpayer monies improperly paid in the no-fault setting.

Ever since the No-Fault Law went into effect, § 3145 (MCL 500.3145) has imposed two separate one year statutes of limitations with respect to enforcing claims for no-fault benefits. The first rule imposes a limitation against legal action where the injured person fails to provide written notice of a claim within one year of the date of the occurrence. The second rule imposes a limitation which prevents enforcement of a claim for unpaid services where the expenses were incurred more than one year before a lawsuit was filed. The Michigan appellate courts, however, have long recognized that the minority and mental incompetence tolling provisions of MCL 600.5851(1) apply to no-fault claims, thereby rendering the one year notice rule and the one year back rule inapplicable in those situations.[5]

Under this longstanding precedent, the MDCH has successfully been able to pursue its subrogated recovery of state taxpayer monies beyond one year from when the injured minor or incompetent person incurred a medical expense.

By not applying the tolling provision of the RJA to the No Fault Act, the Court of Appeals decision below will substantially undermine the MDCH's ability to collect millions of dollars in medical expenditures, further straining the already beleaguered Medicaid funds.

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[5] See *Professional Rehabilitation Associates v State Farm Mutual Auto Ins Co*, 228 Mich App 167, 175-176; 577 NW2d 909 (1998); *Geiger v DAIIE*, 114 Mich App 283, 284; 318 NW2d 833 (1982); *Hartman v Insurance Company of America*, 106 Mich App 731, 734-744; 308 NW2d 625 (1981); *Lambert v Calhoun*, 394 Mich 179, 182 n2; 229 NW2d 332 (1975); *Rawlings v Aetna Casualty & Surety Division*, 92 Mich App 268, 274; 284 NW2d 782 (1979).

CONCLUSION AND RELIEF SOUGHT

This Court should reverse the Court of Appeals decision below as it does not comply with the clear intent of the language of the Revised Judicature Act (RJA) of 1961, as amended in 1993, which indicates that it is meant to "revise and consolidate the statutes relating to the organization and jurisdiction of the Court, of the State". Specifically, the RJA prescribes the "time within which said actions and proceedings may be brought in the Courts of the State." Furthermore, MCL 600.102 of the RJA states, "this act is remedial in character and shall be liberally construed to effectuate the interests and purposes thereof." Thus, the time frame for tolling statutes of limitations is and should be set by the RJA.

Additionally, the Court of Appeals committed reversible error in holding that no-fault actions are not brought under the Revised Judicature Act. Such a ruling is without basis as nothing in the No-Fault Act would indicate some unique characteristic that would bring it outside the umbrella of the tolling provisions that are applicable under RJA. On the contrary, the RJA applies to all civil actions brought in the Courts of this State. In short, there is no exception for no-fault. Such a holding is simply bad law and worse public policy.

Finally, should the Court of Appeals decision be allowed to stand, it will not only nullify long standing protections for minors and incompetent individuals, but would have a tremendous detrimental effect on the State Medicaid programs ability to serve indigent individuals in dire need of medical services. As previously noted in the attached Affidavit, the financial fall-out for the Medicaid program is in the millions of dollars. This is not just an abstract numerical figure

without human costs, but rather, a tangible and actual detriment for the Medicaid program, Medicaid providers and people like Daniel Cameron and his family, who will suffer long-lasting consequences if the Court of Appeals decision is not reversed.

Respectfully submitted,

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Date: March 13, 2006

Affidavit of Jane Alexander

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

Jane Alexander, first being duly sworn, deposes and says:

1. I am currently employed by the Michigan Department of Community Health ["MDCH"], as the Manager of the Court-Originated Liability Section. I have held this position for approximately three and a half years.

2. I make this affidavit based on personal knowledge and on files maintained under my direction and control. If called upon to do so, I can testify competently to the matters set forth herein.

3. My Section is charged with identifying and collection funds from potentially liable third parties for medical expenditures paid by the Medicaid program, pursuant to MCL 400.106 and 42 USC 1396a((a)(25).

4. I have reviewed the Court of Appeals' decision in *Estate of Daniel Cameron, by Diane and James Cameron, Co-Guardians v Automobile Insurance Association, et al.*, Docket No: 127018.

5. My Section currently has 281 active cases with dates of injury more than one year old with outstanding claims of $4,081.935.27.

6. Recently, my Section instituted an automated match with the Michigan Department of Transportation/State Policy CRASH data base which reports all traffic accidents occurring in the State of Michigan. A statistical analysis of the available data indicates that there will be an additional 4,376 cases on an annual basis with a financial impact of $3,011,565.72 per year.

7. Should the Court of Appeals decision in *Cameron* stand, the overall impact to the State Medicaid fee for service program will involve 13,409 accidents with a potential recovery of over 13 million dollars. This does not include recoveries that should be made by the Medicaid managed care plans.

8. For the MDCH to be denied any chance at recovering the funds estimated in paragraphs 5, 6 and 7 would have a major negative impact on our budget.

FURTHER, AFFIANT SAYETH NOT.

Jane Alexander

Jane Alexander

Subscribed and sworn to before me
this 10th day of March, 2006

Maria Rita Enriquez

Notary Public, Ingham County
My commission expires: